



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

DOVER MUNICIPAL EMPLOYEES ASSOCIATION	:	
	:	
Complainant	:	
	:	CASE NO. M-0608:1
CITY OF DOVER, RICHARD LAK, MANAGER	:	
	:	DECISION: 89-43
Respondent	:	
	:	

Representing Dover Municipal Employees Association

Donald E. Mitchell, Esq.
Thomas F. Clark, President-Association

Representing City of Dover

Scott E. Woodman, Esq.
Richard Lak, Town Manager

BACKGROUND

On April 14, 1989, Donald E. Mitchell, Esq., on behalf of the Dover Municipal Employees Association (DMEA) filed unfair labor practice charges against Richard Lak, Dover City Manager (Manager) charging the City of Dover by its Manager, with a violation of RSA 273-A:5 by refusing to meet in negotiations as long as Attorney Mitchell represented DMEA as he also represented another association of municipal employees who had supervisory authority over certain members of DMEA and restricting certain employees from participating in negotiations during working hours.

Hearing in the above matter was held at the City Hall in Dover on June 5, 1989. Attorney Mitchell presented evidence relative to the election and certification as the exclusive bargaining representative of DMEA and his representation of DMEA as its legal counsel.

Mitchell offered in evidence, correspondence from the City Manager to Thomas Clark, President of DMEA, relative to scheduling meetings for negotiations and a letter to Clark advising that the City Attorney, Scott Woodman, had advised Manager Lak that the City should not recognize Attorney Mitchell as the representative of DMEA. The City Attorney's letter of April 4, 1989 to President Clark, stated in part "we no longer recognize Attorney Mitchell as the representative of the Dover Municipal Employees Association." Attorney Woodman for the City in his letter based his decision on Appeal of Manchester Board of School Commission, 129 NH 151, 523 A.2d 114 (1987) (Supreme Court, Case No. 86-053) which in summary states "the same union representation cannot

represent both employees and those who exercise supervision of said employees belonging to the same union."

Other correspondence offered by Mitchell dealt with employees participating in union meetings during working hours and a requirement for department heads to grant permission for such participation.

Mitchell for DMEA alleged such acts denied representation, restricted attendance at negotiating sessions and negatively impacted negotiations and the administration of DMEA affairs, all in violation of 273-A:5 (e). Attorney Woodman for the City, argued that Attorney Mitchell represented DMEA and the Dover Public Administration Association (DPAA) and acted as spokesman for both; that DPAA and DMEA were separate bargaining units and further, that members of DPAA supervised certain members of DMEA.

Woodman further cited the Supreme Court case appeal of Manchester Board of School Committee, cited above, dealing with union bargaining representation and further, fairly pointed out the only difference between the Manchester case and the case at hand as being the representative of the bargaining unit which in this case was an attorney. In the Manchester case, the representative was a member of the same union and in this case, the representative was an attorney. Further, that the City believed that their position of not pursuing negotiations as long as Attorney Mitchell represented both DPAA and DMEA was consistent and in accordance with the cited Supreme Court case.

Thomas F. Clark, President of DMEA, testified that Attorney Mitchell was not a member of the Association and never had been and that he had been retained as legal counsel during their filing of a petition for certification, election and finally, certification of the bargaining unit, and that they wanted him to participate with their negotiating team which is made up of DMEA members only, with Mitchell as legal advisor and spokesman for the team.

After review of exhibited documents and testimony at the hearing, PELRB makes the following findings.

FINDINGS

1. The circumstances in the Manchester School Committee case and the case at hand are not analogous in this Board's view. In the Manchester case, the union of supervisory and the union of teachers were both units of Manchester Education Association and members of the same affiliation.
2. In this case, the two bargaining units are separate and distinct associations, not connected in any way or under any national association umbrella.
3. The negotiating team for DMEA consists of the president, the secretary and others, all members of the Association.
4. Attorney Mitchell is not a member of either DMEA or DPAA.

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4. Attorney Mitchell is not a member of either DMEA or DPAA.

5. Attorney Mitchell is acting as legal counsel to both Associations and acts as spokesman for members of the Negotiating Committees.
6. The Negotiating Committee of DMEA is the negotiating authority. Attorney Mitchell is legal counsel and spokesman only.
7. To deny Attorney Mitchell the right to represent the Negotiating Team of DMEA and DPAA as their legal counsel and spokesman would be a denial of a right conferred upon public employees by 273-A:1, Statement of Policy.
8. The employees in this case do not belong to the same or affiliated bargaining unit.
9. The Board finds the City guilty of improper practice under 273-A:11 (11) by imposing restrictions on employee representation attending negotiating sessions during working hours-see DMEA exhibit #3, memorandum to Department Heads by City Manager dated April 11, 1989.
10. The PELRB finds that Attorney Mitchell can represent DMEA in negotiations.

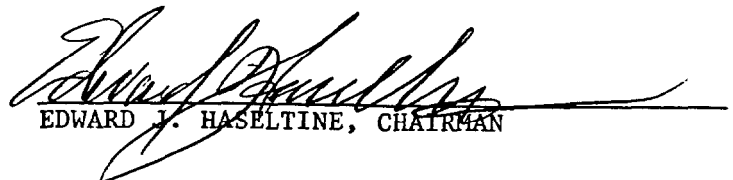
ORDER

The Board finds the City of Dover and its Manager, guilty of unfair labor practice in failing to negotiate in good faith as required under 273-A:5, 1 (e), 11 (b).

The Board denies complainant's request for receiving legal fees.

The Board further ORDERS the City to negotiate in good faith with the duly selected Negotiating Committee of DMEA with Attorney Mitchell as their legal advisor and spokesman and to permit a reasonable number of employees who act as representatives of the bargaining unit to meet in negotiating sessions without loss of compensation or benefits. 273-A:11 (11).

Signed this 22nd day of June, 1989.


EDWARD J. HASELTINE, CHAIRMAN

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Seymour Osmon and James Anderson present and voting. Also present, Evelyn C. Lebrun Executive Director.